

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease W-70661.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. § 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

APPEARANCES: Kenneth E. Lane, Esq., Mount Vernon, Ohio, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Joanne F. Bechtel has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 1, 1982, denying her petition for reinstatement of noncompetitive oil and gas lease W-70661.

Effective October 1, 1980, a noncompetitive oil and gas lease for 200 acres of land situated in Natrona County, Wyoming, was issued to appellant, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). By notice dated October 5, 1982, BLM informed appellant that oil and gas lease W-70661 had terminated by operation of law for failure to pay the annual rental on the anniversary date of the lease, October 1, 1982. On October 18, 1982, appellant submitted a letter to BLM explaining that she had been "out of town" when the rental came due and had sent the rental payment "postmarked" before the due date. In its November 1982 decision, BLM rejected appellant's "petition" for reinstatement of oil and gas lease W-70661.

because appellant had not demonstrated that failure to submit the rental payment timely was either justifiable or not due to a lack of reasonable diligence. BLM noted that the rental check was dated September 29, 1982, and sent to BLM in an envelope postmarked September 30, where it was received on October 4. BLM stated that mailing the rental payment "from Ohio on September 30 for delivery in Cheyenne, Wyoming, on October 1 does not constitute reasonable diligence" and that appellant had offered no justifiable reason "for your not mailing the payment in time to reach this office by the due date."

In her statement of reasons for appeal, appellant contends that the failure to submit the rental payment timely was "justifiable." Appellant states that the month of September 1982 was particularly "difficult" for her due to the fact that her husband was starting a "new career," she was starting the new school year in her teaching position, and her mother-in-law was seriously ill with "congestive heart failure and chronic lung disease," necessitating several weekly visits.

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). This termination occurs by operation of law, not by the action of the Department. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was paid timely. 43 CFR 1821.2-2(d), (f); Ruth Eloise Brown, 60 IBLA 328 (1981). Because appellant's rental was not received on October 1, 1982, the due date, the lease terminated automatically.

However, a terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976), if, among other requirements, the lessee shows that failure to pay on time was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). In order to show that late payment was not due to lack of reasonable diligence, a lessee must ordinarily show that payment was mailed sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Mailing the rental payment 1 day before it is due does not constitute reasonable diligence. See Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981), and cases cited therein.

[1] Reinstatement may nevertheless be proper if the failure to make timely rental payment is justifiable. Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir.), cert. denied, 454 U.S. 1032 (1981); Ralph W. M. Keating, 55 IBLA 113 (1981). Justification has been found where late payment was caused by illness of a friend, C. H. Winters, 34 IBLA 350 (1978); severe winter weather, Genevieve C. Aabye, 33 IBLA 285 (1978); injury to a key employee, David Kirkland, 19 IBLA 305 (1975); or illness of the lessee, Ada E. Lundgren, 17 IBLA 132 (1974).

Appellant, however, has not demonstrated that her failure to pay the rental timely was "justifiable." In addition to the fact that extenuating circumstances must be proximate in time to the lease anniversary date, such

circumstances must be the "causative factor" in the failure to exercise reasonable diligence in mailing the rental payment. Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed, Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Calif. 1975). Thus, in Billy Wright, 29 IBLA 81 (1977), we held that the illness of the appellant's brother, who was suffering with terminal cancer and subsequently dies, during August 1976 was a circumstance which justified the appellant's failure to pay the annual rental on the lease anniversary date, September 1, 1976. We noted that because the appellant was "distraught during this time \* \* \* [he] was unable to give full attention to his business affairs." Id. at 82. Similarly, in C. H. Winters, supra, we held that the illness of a friend, whom the appellant visited on an out-of-town business trip, stayed with, and cared for until November 1, 1977, the lease anniversary date, was a circumstance which justified the late rental payment.

In the present case, appellant has not established the causal link between the asserted circumstances and her failure to pay the rental timely. See Louis Samuel, supra at 274. Appellant has not demonstrated how the fact that her husband was starting a new job or the fact that she was starting a new school year was so disruptive of her life that it caused her to make a late rental payment. We note also that appellant's husband had retired from his former job in June 1982 and there is no indication that he began his "new career" in September 1982. In addition, appellant is apparently a teacher of some standing presumably accustomed to the start of a new school year. Finally, we note that the nature of appellant's mother-in-law's illness is "chronic" and, while serious in nature, does not rise to the level of severity or the need for outside attention observed in Billy Wright, supra. Moreover, due to the nature of the illness, appellant has apparently adopted to it as a part of her life to the extent that she can plan on visiting her mother-in-law "two (2) or three (3) times each week." Appellant has not shown that such a circumstance so disrupted her normal routine, as happened in Billy Wright, supra, and C. H. Winters, supra, that she was unable to conduct her usual affairs, including payment of the annual rental for oil and gas lease W-70661.

Thus, it is clear that appellant's oil and gas lease cannot be reinstated pursuant to 30 U.S.C. § 188(c) (1976). We note, however, that Congress has enacted another statutory provision to allow reinstatement of oil and gas leases which are not subject to reinstatement under 30 U.S.C. § 188(c) (1976). Section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447 (1983), amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail herself of this provision, she should contact the Wyoming State Office, BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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Will A. Irwin     Anne Poindexter Lewis  
Administrative Judge

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Administrative Judge

